



**3IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, GOKAK.**

BEFORE: Sri.Umesh S. Atnure,

B.Com.LL.B.(Spl)

O.S. No.396/2023

DATED THIS 04th DAY OF FEBRUARY-2026

Plaintiff: 1. Shri. Laxman S/o Beerappa Dabaj,
Age: 77 years, Occ: Agri,
R/o: Pamaladinni, Tq: Gokak.

V/s

Defendant: 1. Shri. Bhupal S/o Dudappa Hulloli,
Age: 70 years, Occ: Business,
C/o: Sachin S/o Bhupal Hulloli,
R/o: Ghataprabha, Mallapur (PG).

**PARTIES TO I.A.No.I FILED U/o XXXIX RULE 1 & 2 R/W
SEC 151 of CPC**

Applicant: 1. Shri. Laxman S/o Beerappa Dabaj
By P.A. Holder R/o Pamaladinni,
Tq: Gokak.

.....Plaintiff/Applicant

Vs.

Opponents: 1. Shri. Bhupal S/o Dudappa Hulloli
R/o Ghataprabha, Mallapur (PG)

.....Opponent/Defendant

**PARTIES TO I.A.No.X FILED U/o XXXIX RULE 4 R/W SEC
151 OF CPC**

Applicant: 1. Shri. Bhupal S/o. Dundappa Hulloli.

.....Applicant/Defendant

Vs.

Opponents: 1. Shri. Laxman S/o. Beerappa Dabaj

.....Opponent/Plaintiff

**ORDERS ON I.A.No.I & X FILED U/o XXXIX RULE 1 & 2
R/W SEC 151 of CPC & U/o XXXIX RULE 4 R/W SEC
151 OF CPC**

The plaintiff filed I.A.No.I U/o XXXIX Rule 1 and 2 R/W Section 151 of CPC praying to grant exparte temporary injunction order against defendants restraining him his men, agents, servants or anybody acting behalf of him from alienating suit property bearing R.S.No.30/1 measuring 07 acre 24 guntas of Pamaladinni village till disposal of this suit.

The defendant has filed I.A.No.X U/o XXXIX Rule 4 R/W Section 151 of CPC praying to vacate/modified the exparte temporary injunction dated 07.07.2023 / 28.08.2023.

2. In the accompanying affidavit, of I.A.No.I the plaintiff contended that he has filed this present suit seeking the relief of declaration to declare that he is the legal heir of deceased Bagavva W/o. Siddappa Dabaj and also sought for permanent injunction against the defendants from disturbing in his peaceful possession, enjoyment of the suit property.
3. In the accompanying affidavit, the plaintiff contended that the defendant by taking undue advantage of his name appearing in the R/R of the suit land is likely to alienate the suit property to the stranger in order to make inconvenience to him and hurdle for better progress of the suit property and defendant may creates some sort of charge over the suit property without his knowledge as such, he has filed this present application restraining the defendant from alienating or mortgaging the suit property and by creating charge over the suit property. If the application is allowed no hardship will be cause to the defendant on the contrary he will be put to great hardship which cannot be compensated in terms of money. As such, he prayed to allow the application.

4. The defendant filed a memo adopting the written statement as objections to I.A.No.I. The defendant in his written statement denied the entire contention of the plaintiff and further contended that the deceased Bagavva Siddappa Dabaj purchased the suit property under registered sale deed dated 27.11.1939 from one Siddappa S/o Siddappa Sampaganvi and Siddalingappa Bhimappa Shivapur for valuable consideration amount of Rs.300/-. The suit property is independent property of the Bagavva as such, during her lifetime she has got liberty to dispose the same infavour of defendant and now plaintiff cannot question the same on the ground that Bagavva was no more on the date of the execution of the sale deed. Further he contended that the name of Bagavva is appearing in the RTC extracts of the suit property and she executed sale deed in his favour and it is also evident that in the year 1967 the said Bagavva taken loan from bank by mortgaging the suit property which is evident from ME.No.1696. And she has taken loan from the suit property on 05.02.1966 and repaid the same in the year 1972 which is evident from ME.No.2002 of Pamaladinni village. On 12.07.1972 for her legal necessity she sold the

suit property for sale consideration amount Rs.5,000/- to him under registered sale deed after understanding the contents of the sale deed Bagavva put her thumb impression in the presence of the witnesses and handed over possession of the suit property in his favour. Based on the sale deed dated 12.07.1972 as per ME.No.2023 his name was mutated to the suit property on 07.03.1973. During the lifetime of Bagavva she never challenges the sale deed executed by her now after her death the plaintiff cannot question the sale deed. He denied that as on the date of the execution of the sale deed the Bagavva is no more and the plaintiff by creating the death extracts of the Bagavva falsely alleging that as on the date of the execution of the sale deed i.e., 12.07.1972 the Bagavva was not alive. The plaintiff has obtained the death certificate of another person said to be the same is pertains to Bagavva but the Bagavva herself appeared before the bank taken the loan and repaid the loan and also she sold the suit property in his favour. The alleged death extracts relied by the plaintiff does not pertains to Bagavva it pertains to some other person who is having similar name. Since from the date of purchase of the suit property he is in possession and

enjoyment of the suit property and and he invested huge amount and develop the suit property. The plaintiff is no were concerned to deceased Bagavva at any point of time the plaintiff is falsely contending that he is the nearest relative of Bagavva hence, the contention of the plaintiff is not at all acceptable one. As such, the suit filed by the plaintiff is barred by limitation and plaintiff is not entitled for any relief as sought by him. Accordingly prayed to reject the application.

5. After institution of this suit by hearing the arguments of learned counsel for the plaintiff this court has granted the exparte temporary injunction order restraining the defendant from alienating, creating any mortgage or charge over the suit property. The said T.I order is extended from time to time and now T.I order is extended till further order.
6. The defendant filed an application U/o XXXIX Rule 4 on 29.03.2025 praying to vacate / modified the exparte temporary injunction order granted by this court on 07.07.2023 / 28.08.2023.

7. In the accompanying affidavit, the defendant contended that the plaintiff is not at all having any right, title or interest over the subject matter of the suit property inspite of it filed this false suit for declaration to declare that he is the nearest legal heir of deceased Bagavva Siddappa Dabaj and consequential relief of temporary injunction.
8. The plaintiff filed application U/o XXXIX Rule 1 and 2 R/W Section 151 of CPC restraining him from alienating, transferring or creating any charge over the suit property and after his appearance he filed his written statement and objections to I.A.No.I. As the plaintiff is not concerned to the suit property nor in possession, use and enjoyment of the suit property at any point of time. As per the sale deed dated 27.11.1939 the deceased Bagaavva purchased the suit property from Siddappa Sampaganvi and Sidalingappa Bhimappa Shivapur under registered sale deed dated 27.11.1939. The suit property is the exclusive property of the Bagavva later on for her family and legal necessity she sold the same in his favour on 12.07.1972 and put him in possession of the suit property and his name was mutated

under ME.No.2023 as per the sale deed. Since 1972 till today he is exercising his exclusive ownership over the suit property and till today his name is appearing in the R/R of the suit property and he has also raised loan over the suit property from time to time.

9. The plaintiff has obtained the exparte temporary injunction order restraining him from alienating the suit property. He contended that he purchased the suit property with an intention to acquired the property for his family as such, he is not having any mind to alienate the suit property and he also not having any intention to alienate or transferring the suit property till disposal of the suit.
10. Further the defendant contended that during the pendancy of this suit in order to harass him the plaintiff has filed an appeal before Assistant Commissioner, Bailhongal and challenged the ME.No.2023 after laps of 50 years. The Assistant Commissioner, Bailhongal without applying mind passed illegal order and allowed the appeal by canceling the ME.No.2023 of Pamaladinni village. Aggrieved by the same he has preferred revision before Deputy Commissioner,

Belagavi in RB/RTA-278/2024-25. After hearing both side the Deputy Commissioner, Belagavi set aside the order passed by the Assistant Commissioner, Bailhonal in RA.No.223/2023 and restore ME.No.2023 dated 17.03.1973 such being the facts the plaintiff hurriedly without knowledge with waiting till completion of the appeal period got deleted his name and got restored the name of Bagavva Siddappa Dabaj. The entry of name of Bagavva Siddappa Dabaj has no legal sanctity in the eye of law. After disposal of the revision petition by Deputy Commissioner, Belagavi he gave an application to revenue authorities requesting them to restore ME.No.2023 by entering his name in the RTC extracts of the suit property. Meanwhile the plaintiff got entered the order of injunction in the RTC extracts of the suit property on 15.03.2025. Now the Tahasildar, Gokak has declined to restore his name in the RTC extracts of the suit property as per the order passed by the Deputy Commissioner, Belagavi in RB/RTA-278/2024-25 on the ground that there is a stay order from the court. The interim order of stay is got entered by the plaintiff in the RTC extracts of the suit property same is causing hurdle for him

to effect the order passed by the Deputy Commissioner, Belagavi as such, it is just a necessary to vacate / modified the exparte temporary injunction order by allowing this application. Further the defendant contended that the suit itself is not maintainable and plaintiff has no locus standi to filed this suit the plaintiff has suppressed the real facts by playing fraud upon this court and got obtained exparte temporary injunction order. The plaintiff has no prima-facie case the balance of convenience lies is in favour if the temporary injunction is vacated or modified no injustice or hardship would be caused to the plaintiff. As such, he prayed to allow this application.

11. The plaintiff has filed objections to this application by denying entire contention of the defendant. Further contended that Bagavva Siddappa Dabaj purchased the suit property and based on registered sale deed her name was appearing in the RTC extracts of the suit property till her death she was in possession and cultivation of the suit land. Her husband Siddappa Laxman Dabaj died on 16.10.1957 and Bagavva Siddapa Dabaj died on 18.09.1963 without any

issues. He is the only near legal heir to deceased Bagavva Siddappa Dabaj and he is in actual cultivation and possession of the suit property the defendant was never in actual possession and cultivation of the suit property at any point of time and his name is appearing as a Hallow entry in the RTC extracts of the suit property without any legal and valid title.

12. Further the plaintiff the brother of the defendant by name Parish Dundappa Hulloli was the secretary of The Karnataka Kurabar Co-Operative Bank Ltd Garag, Branch Gokak and he was well aware that Bagavva Siddappa Dabaj was the owner of the suit property the Bagavva and her husband were died without issues. The name of Bagavva alone standing in the RTC extracts of the suit property. By taking undue advantage of this fact the defendant brother hatched a plan to gulp the suit property got illegally encumbered the suit property for Rs.200/- on 05.02.1966 and on 12.07.1972 has paid the loan amount pertaining to the Bagavva Siddappa Dabaj. The brother of the defendant was very much rich, shrued and political influenced person in order to

gulf the suit property pertaining to Bagavva inactive collusion with the bound writer, Sub-registrar and witnesses got created sale deed in the name of defendant on 12.07.1972 without consideration and knowing fully well that Bagavva Siddappa Dabaj died on 18.09.1963. Based on that sale deed illegally the defendant got mutated his name to the suit property. The alleged sale deed is illegal null and void at the very inception and it will not create any sort of right, title or interest over the suit property in the name of defendant.

13. The defendant admitted that Bagavva Siddappa Dabaj purchased the suit property on 27.11.1939 as on the date of the sale deed her age was shown as 45 years as such, it shows that the Bagavva born in the year 1894. The alleged sale deed pertaining to the suit property in the name of defendant is executed on 12.07.1972 wherein the age of Bagavva shown as 55 years falsely. On the contrary it was ought to have mentioned the age of the Bagavva as 78 years but mentioned as 45 years nearly there is a difference of 33 years. Therefore the alleged sale deed was got created by the defendant after death of Bagavva Siddappa Dabaj. The

defendant has not stated the date of death of the Bagavva Siddappa Dabaj as such, the Assistant Commissioner, Bailhongal as rightly set aside ME.No.2023 by allowing this appeal. The defendant appeared before this court on 09.04.2025 and filed his W.S and memo adopting the W.S as objections to I.A.No.I on 25.10.2023. Since 25.10.2023 till 09.04.2025 the defendant kept quite for 2 years suddenly filed this application for vacating the exparte temporary injunction order. Hence, the application filed by the defendant is not maintainable one. Hence, he prayed to reject the application.

14. Heard the arguments of both side on I.A.No.I and X. Perused the material available on records.

15. The points that arise for my consideration are as follows:

- 1. Whether plaintiff has made prima-facie case to show that he is the near relative of the deceased Bagavva Siddappa Dabaj?**
- 2. Whether balance of convenience lies infavour of the plaintiff?**

- 3. If temporary injunction is not granted whether the plaintiff will be put to irreparable loss and injury which cannot be compensated in terms of money.**
- 4. Whether defendant has made out grounds to vacate / modified the exparte temporary injunction granted by this court on 07.07.2023?**
- 5. What order?**

16. My findings on the above Points are:

- | | |
|---------------------|---------------------------|
| Point No.1:- | In the Negative |
| Point No.2:- | Infavour of the Defendant |
| Point No.3:- | Infavour of the Defendant |
| Point No.4:- | In the Affirmative |
| Point No.5:- | As per final order |
- for the following:

REASONS

17. **Point No.1:-** In this suit there is no dispute that deceased Bagavva Siddappa Dabaj purchased the suit property under registered sale deed dated 27.11.1939 and based on the sale deed the name of Bagavva Siddappa Dabaj was appearing in the RTC extracts of the suit property. The plaintiff contended that the said Bagavva Siddappa Dabaj died on 18.09.1963 and the husband of Bagavva i.e., Siddappa Laxmappa Dabaj died on 16.10.1957 and both of them died without any issues. The plaintiff is the only nearest relative of the deceased Bagavva Siddappa Dabaj.
18. In this regard the plaintiff shown the genealogy in the plaint as the Laxmappa @ Laxman Dabaj died leaving behind him 2 sons namely Siddappa and Beerappa. The Siddappa married Bagavva and Beerappa married Paravva the Siddappa and Bagavva are not having any issues. The Beerappa and Paravva are having 2 sons namely Laxman i.e., the plaintiff and Sidagound as such, the plaintiff is the nearest relative of the deceased Bagavva Siddappa Dabaj. In support of this contention apart from the genealogy stated

in the plaint the plaintiff has not produced any prima-facie material document to show that the Laxmappa @ Laxman Dabaj had 2 sons namely Siddappa and Beerappa and Siddappa and Bagavva died issueless and he is the only son of second son of propositus Laxman Dabaj i.e., Beerappa Dabaj. In the absence of the any prima-facie material with regard to the relationship of the plaintiff with deceased Bagavva Siddappa Dabaj at this pretrial stage the contention of the plaintiff that he is the nearest relative of deceased Bagavva Siddappa Dabaj is not acceptable one. In order to decide the relationship in between the plaintiff and deceased Bagavva Siddappa Dabaj it requires full-fledged trail. Hence, at this stage the contention of the plaintiff that he is the nearest relative of the Bagavva Siddappa Dabaj is not acceptable one.

19. It is an admitted fact that the Bagavva Siddappa Dabaj was purchased the suit property from Siddappa Siddappa Sampaganvi and Sidalingappa Bhimappa Shivapur under registered sale deed dated 27.11.1939 and since from the date of the purchased property she was in possession of the

suit property and her name was appearing in the RTC extracts of the suit property. The plaintiff produced the certified copy of the sale deed dated 12.11.1939 and mutation registered extracts bearing ME.No.527. By perusing the said documents they clearly goes to shows that Bagavva Siddappa Dabaj purchased the suit property under registered sale deed dated 12.11.1939 from one Siddappa Sampaganvi and Sidalingappa Shivapur. Further the plaintiff has produced the RTC extracts of the suit property for the year 1952-53 to 1969-70 wherein by perusing the same it goes to shows that the name of Bagavva Siddappa Dabaj is appearing in the RTC extracts of the suit property. And this fact is also admitted by the defendant hence, it is clear that Bagavva Siddappa Dabaj was the absolute owner of the suit property.

20. The plaintiff contended that the said Bagavva Siddappa Dabaj died on 18.09.1963 and the husband of Bagavva Siddappa Dabaj died on 16.10.1957 without any issues. The brother of the defendant by name Parish Dundappa Hulloli was the secretary of The Karnataka Kurubar Co-operative

Society Bank Ltd Garag, Branch Gokak and and well aware that Bagavva Siddappa Dabaj was the owner of the suit property and the husband of the Bagavva and Bagavva were died in the year 1957 and 1963 respectively without issues. By taking undue advantage of entry of the name of Bagavva in the RTC extracts of the suit property he hatched the plan to gulp the suit property illegally encumbered the suit property for Rs.200/- on 05.02.1966 and on 12.07.1972 paid the loan. As the brother of the defendant is rich, shrued and politically influenced person inactive collusion with the bound writer, Sub-registrar and witnesses got illegally managed to create a sale deed dated 12.07.1972 in respect of the suit property alleging that the Bagavva Siddappa Dabaj has sold her suit property infavour of the defendant for sale consideration amount of Rs.5,000/-. Under said created registered sale deed the defendant illegally got mutated his name to the suit property and falsely alleging that he is in possession and enjoyment of the suit property.

21. In support of this contention the plaintiff produced the death certificate of Siddappa Laxman Dabaj who is the husband of

the deceased Bagavva and death certificate of Bhagavva wherein by perusing the same it shows that the husband of the Bhagavva by name Siddappa died on 16.10.1957 and Bagavva died on 18.09.1963. Further the plaintiff has produced ME.No.1696 dated 18.06.1967 wherein by perusing the same it shows that encumbrance for Rs.200/- is created in the name of The Karnataka Kurubar Co-operative Society Bank Ltd. Further the plaintiff has produced the ME.No.2002 dated 20.07.1972. By perusing the same it goes to shows that the mortgage created for Rs.200/- in the name of The Karnatak Kurubar Co-operative Society Bank Ltd, is canceled. The plaintiff produced the certified copy of the sale deed alleged to be executed by Bagavva Siddappa Dabaj infavour of the defendant. By perusing the same it goes to shows that the said sale deed was came to be executed on 12.07.1972. Further the plaintiff produced ME.No.2023 dated 07.03.1973. By perusing the same it goes to shows that based on the sale deed dated 12.07.1972 the name of defendant is mutated to the suit property. Further the plaintiff has produced the RTC extracts of the suit property for the year 1971-72 to 1980-81 and for the year 2022-23.

Wherein by perusing the same it shows that from 1971-72 to 2022-23 the name of defendant is appearing in the RTC extracts of the suit property.

22. The defendant contended that the plaintiff is falsely contending that the Bagavva Siddappa Dabaj died on 18.09.1963 but the death certificate produced by the plaintiff is a created document. As the Bagavva Siddappa Dabaj was the absolute owner of the suit property she mortgage the suit property for Rs.200/- in the name of The Karnataka Kurubar Co-operative Society Bank Ltd in the year 1972 and discharge the mortgage on 27.09.1972. further it is the contention of the defendant that when the suit property was mortgage to The Karnataka Kurubar Co-operative Society Bank Ltd the Bagavva was alive and she herself obtained the loan on the suit property and she has repaid the said amount. As the Bagavva was in need of money of her family and legal necessity as such she sold the suit property in his favour on 12.07.1972 accordingly ME.No.2023 was certified since the date of purchase he is in possession and enjoyment of the suit property. In support of this contention the

defendant also relied on the RTC extracts of the suit property from the year 1952-53 to 1972-73 in these RTC extracts the name of Bagavva is appearing and after the year 1972-73 to the name of defendant is mutated as per ME.No.2023 and since 1973-74 till 2023-24. By perusing these RTC extracts it is clear that in these RTC extracts the name of defendant was mutated based on the sale deed executed by Bagavva Siddappa Dabaj on 12.07.1972. Since from 1972 till 2020-2023 neither Bagavva during her lifetime nor the present plaintiff has challenged the sale deed dated 12.07.1972 and also challenged the entry of the name of the defendant in the RTC extracts of the suit property and since from the date of the purchase he is in possession and enjoyment of the suit property. The certified copy of the sale deed 12.07.1972, ME.No.2030 and RTC extracts produced by both the parties the prima-facie goes to shows that the defendant was purchaseD the suit property from Bagavva Siddappa Dabaj on 12.07.1972 since than till today he is in possession and enjoyment of the suit property.

23. The plaintiff contended that the brother of the defendant was working as a secretary in The Karnataka Kurubar Co-operative Society and he got created the documents alleging that the Bagavva has mortgage the suit property on 18.06.1967. Even though the Bagavva died on 18.09.1963 and the Parish Hulloli himself repaid Rs.200/- to the bank and got canceled the mortgage And thereafter got created the sale deed dated 12.07.1972. The plaintiff has produced the endorsement issued by PKPS Pamaladinni dated 08.01.2024 by perusing the same it clearly goes to show that the CEO of said society has issued the endorsement stating that no document is available in their society to show that who was the secretary for said society in the year 1980 are prior to it. But they have stated that in the year 1980-81, 1981-82 the Parish Dundappa Hulloli was the secretary. Further the plaintiff has produced the endorsement issued by the BTCC bank Belagavi wherein also they clearly stated that in their society no documents were available from 1958 to 1982 to show who is the secretary. Hence, it prima-facie goes to show that the plaintiff has not produced any prima-facie document to show that the Parish Dundappa Hulloli

was working as a secretary in The Karnataka Kurubar Co-operative Society during the year 1966-67. Without there being any prima-facie material evidence at this stage the contention of the plaintiff is not acceptable one.

24. The defendant contended that the alleged death certificate which is relied by the plaintiff was not the date of death of Bagavva as 18.09.1963 same is got created by the plaintiff. In support of this contention the defendant has produced the certified extracts of the birth and death registered maintain by competent authority during the year 1963. By perusing the said document it goes to shows that one Bagavva D/o Siddappa Dabaj died on 18.09.1963 at the time she was aged about 3 months and she died due to stomach pain. Further by perusing the death certificate it is produced by the plaintiff wherein the name of Bagavva is mentioned as Bagavva D/o Siddappa Dabaj and date of death is mentioned as 18.09.1963 and it is also clear that at column No.10 the date of registration of date of death is kept blank. If at all the Bagavva W/o Siddappa Dabaj died on 18.09.1963 in the death certificate her name would have shown as Bagavva

W/o Siddappa Dabaj. But in the death certificate produced by the plaintiff the name of Bagavva is mentioned as Bagavva D/o Siddappa Dabaj. This facts creates doubt in the mind of the court and so also by perusing the extracts of birth and death register it is mentioned by competent authority in their day to day business clearly goes to shows that one Bagavva D/o Siddappa Dabaj died on 18.09.1963 and she was aged about 03 months and died due to stomach pain. Hence, these documents prima-facie shows that the Bagavva D/o Siddappa Dabaj whose name is appearing in the death certificate produced by the plaintiff is not the Bagavva W/o Siddappa Dabaj hence, at this stage the contention taken by the plaintiff that Bagavva W/o Siddappa Dabaj died on 18.09.1963 is not acceptable one and genuiness of death certificate produced by the plaintiff and the death registered extracts produced by the defendant will be decided only after full-fledged of the trial. At this pretrial stage in view of the prima-facie material produced by the defendant with regard to the date of death of the Bagavva Siddappa Dabaj the death certificate is produced by the plaintiff is not believable one. Hence, it appears that as on

the date of execution of the sale deed dated 12.07.1972 the Bagavva Siddappa Dabaj was alive.

25. The learned counsel for the plaintiff contended that in the sale deed dated 12.11.1939 under which the Bagavva Siddappa Dabaj purchased this property her age is shown as 45 years and the sale deed dated 12.07.1972 under which the defendant has purchased the suit property wherein the age of Bagavva is mentioned as 55 years and nearly there is a difference of 33 years in the age of the Bagavva as such, the alleged sale deed which is relied by the defendant is illegal nonest in the eye of law.
26. The sale deed dated 12.07.1972 is a registered sale deed and it is more than 30 year old document and it has got presumptive value in the eye of law with regard to with due execution. Whether the sale deed was impersonate or not will be decided only after full-fledged trial of the court. The plaintiff apart from the death certificate has not produced any other prima-facie material evidence to show that Bagavva Siddappa Dabaj died on 18.09.1963 on the other the defendant has produced some prima-facie document to show

that on 18.06.1967 the Bagavva Siddappa Dabaj alive she mortgage the suit property and also the defendant has produced the document to show that when the mortgage was redeemed on 20.07.1972 by Bagavva and she was alive. The alleged sale deed which executed by Bagavva Siddappa Dabaj inn favour of defendant was came to be executed on 12.07.1972. Hence, prima-facie at this stage shows that as on the date of the execution of the sale deed 12.07.1972 the Bagavva Siddappa Dabaj was alive. Hence, without there being any acceptable prima-facie material evidence the contention of the plaintiff is that as on the date of the execution of the sale deed dated 12.07.1972 Bagavva Siddappa Dabaj was not alive is not acceptable one. Hence, by perusing all the contention of the both the parties and all the documents relied by the both parties at this pretrial stage I am of the consider view that the plaintiff has not made out any prima-facie case in his favour. On the other hand the defendant has putforth sufficient prima-facie material before this court to show that as on 12.07.1972 Bagavva was alive she was executed the sale deed infavour of the defendant on 12.07.1972 based on that sale deed as

per ME.No.2023 the name of defendant is mutated to the suit property till 2023 is name was continued in the RTC extracts. Hence, I am of the consider view that the plaintiff is failed to make out a prima-facie case in his favour. Hence, **I answered the Point No.1 in the Negative.**

27. **Point No.2:-** The plaintiff contended that the alleged sale deed dated 12.07.1972 is illegal and non-est in the eye of law hence, same cannot be accepted and the alleged sale deed is got created by the defendant by impersonation and as on the date of execution of sale deed Bagavva Siddappa Dabaj was not alive.
28. The defendant contended that he legally purchased the suit property from Bagavva Siddappa Dabaj under registered sale deed dated 12.07.1972 and accordingly his name was mutated to the suit property as per ME.No.2023 and since from 1972-73 to 2022-23 he is in possession and enjoyment of the suit property. The plaintiff has also produced the copy of the ME.No.2023 and RTC extracts of the suit property from 1972-73 to 2022-23 and the defendant has also produced the ME.No.2023 and RTC extracts of the suit property from the

year 1972-73 to 2022-23. These documents clearly goes to shows that based on the sale deed dated 12.07.1972 the name of the defendant was mutated and he is in possession of the suit schedule property since from the date of the purchase of the suit property till today.

29. The defendant contended that the plaintiff even though not related to Bagavva Siddappa Dabaj after 50 years of certification of ME.No.2023 got challenged the same before Assistant Commissioner, Bailhongal and the said appeal was came to be allowed by the Assistant Commissioner, Bailhongal without looking into the material documents and accordingly set aside ME.No.2023 and order to restored the name of Bagavva Siddappa Dabaj in the RTC extracts of the suit property. The plaintiff has produced the order copy of the Assistant Commissioner, Bailhongal dated 20.12.2024 wherein the Assistant Commissioner, Bailhongal canceled the ME.No.2023 dated 17.03.1973 and order to restored the name of Bagavva W/o Siddappa Dabaj. The defendant contended that aggrieved by the order passed by the Assistant Commissioner, Bailhongal he has preferred appeal

before Deputy Commissioner, Belagavi and after hearing the both side the Deputy Commissioner Belagavi allowed the RB/RTA-278/2024-25 on 02.04.2025 and set aside the order of Assistant Commissioner, Bailhongal dated 21.12.2024 and order to restored the name of the defendant in the RTC extracts of the suit property. The plaintiff preferred appeal against the order passed by the Deputy Commissioner, Belgavi before Hon'ble High Court of Karnataka in WP.No.101866/2025. The Hon'ble High Court of Karnataka pleased to dismissed the writ petition filed by the plaintiff and upheld the order passed by the Deputy Commissioner, Belagavi. Hence, these documents prima-facie goes to shows that whatever entries were took place in the RTC extracts of the suit property based on the sale deed dated 12.07.1972 are restored.

30. Based on the order passed by the Deputy Commissioner, Belagavi dated 04.03.2025 the defendant filed application before the Tahasildar, Gokak to restored his name in the revenue records of the suit property but the Tahasildar, Gokak has rejected the application stating that as stay order

is entered in the RTC extracts of the suit property as such, the entries cannot be restored.

31. The defendant contended that this court has passed exparte temporary injunction order on 07.07.2023 and the plaintiff has gave an application before the Tahasildar, Gokak for entering the stay order in the RTC extracts of the suit property. But the application filed by the plaintiff is came to be rejected by the Tahasildar, Gokak. The defendant contended that till 15.03.2025 the plaintiff has not made any effort to enter the temporary injunction order in the RTC extracts of the suit property only on 15.03.2025 the plaintiff got entered the stay order in RTC extracts of the suit property the said stay order is creating hurdle for him for restoring the entries in the RTC extracts of the suit property. The plaintiff has produced the endorsement issued by the Tahasildar, Gokak dated -07-2023 stating that there is no any judgment of Hon'ble High Court of Karnataka or Apex Court of India to entered the stay order in the RTC extracts as such, they have declined to enter the stay order in the RTC extracts of the suit property. Further by perusing the

document produced by the defendant it shows that after disposal of revision by the Deputy Commissioner, Belagavi the plaintiff once again submitted his request to enter the stay order copy before the Tahasildar on 14.03.2025 and the Tahasildar, Gokak has obtained the legal opinion from the AGP, Gokak on 14.03.2025 and on 15.03.2024 the AGP has submitted his opinion and on 15.03.2023 the Tahasildar, Gokak has entered the stay order in the RTC extracts of the suit property. Now based on the entry of the stay order the Tahasildar, Gokak is declined to restore the RTC entries as per the order passed by the Deputy Commissioner, Belagavi in RB/RTA-278/2024-25 dated 04.03.2025. Hence, it shows that only with an intention to create hurdle for the defendant within 10 days from the order passed by the Deputy Commissioner, Belagavi hurriedly plaintiff got entered the stay order in the RTC extracts of the suit property.

32. As the defendant has put forth sufficient prima-facie material document before this court to show that he purchased the suit property under registered sale deed dated 12.07.1972

and based on that his name was mutated and since till today he is in peaceful possession and enjoyment of the suit property. The plaintiff hurriedly got restored the name of Bagavva Siddappa Dabaj immediately after passing the order by the Assistant Commissioner, Bailhongal by canceling the ME.No.2023 and so also it is clear that the plaintiff hurriedly got entered the exparte temporary injunction order in the RTC extracts of the suit property only to cause hurdle to the defendant to enter his name in the suit property. Hence, by consider conduct of the plaintiff and all the material produced by both the parties I am of consider view that the defendant who has purchased the suit property under registered sale deed dated 12.07.1972 by paying valuable consideration and based on that sale deed the name of defendant was mutated to the suit property under ME.No.2023 and since then he is in possession and enjoyment of the suit property as such, the balance of convenience lies more infavour of the defendant as compared to the plaintiff. Hence, **I answered the Point No.2 infavour of the Defendant.**

33. **Point No.3:-** The plaintiff has sought for the relief of temporary injunction restraining the defendant from alienating the suit schedule property. The plaintiff has failed to make out a prima-facie case to show that the sale deed dated 12.07.1972 was got created by the defendant after the death of Bagavva W/o Siddappa Dabaj and plaintiff is also failed to make out a prima-facie case to shows that he his the only nearest relative of deceased Bagavva Siddappa Dabaj under such circumstances if temporary injunction has prayed by the plaintiff is not granted it will not cause any loss or hardship to the plaintiff. On the other hand definitely it will cause great hardship and loss to the defendant as he has purchased suit property under registered sale deed on 12.07.1972. Hence, **I answered the Point No.3 infavour of the Defendant.**

34. **Point No.4:-** The defendant contended that only due to the entry of the court stay order in the RTC extracts of the suit property it has cause hurdle to him to mutate to reenter his name in the RTC extracts of the suit property as per the order passed by the Deputy Commissioner, Belgavi in

RB/RTA-278/2024-25 dated 04.03.2025 which is confirmed by the Hon'ble High Court of Karnataka as such, he contended that the temporary injunction order granted to infavour of plaintiff is to be vacated. The defendant has made out a prima-facie case and balance of convenience lies infavour of the defendant as compared to the plaintiff and the defendant is purchaser of the suit property for valuable consideration under registered sale deed if based on the order passed by the Deputy Commissioner, Belgavi dated 04.03.2025 his name is not restored in the RTC extracts of the suit property then definitely it will cause great loss and hardship to the defendant and in order to protect the right of the defendant it is just a necessary to vacate the temporary injunction order dated 07.07.2023 and 28.08.2023 are to be vacated. Hence, **I answered the Point No.4 in the Affirmative.**

35. The learned counsel for the plaintiff relied on the authority reported in *HCR 2023 Kant.694 in between Shanthamma Vs. Jayamma* contending that the alleged sale deed dated 12.07.1972 is illegal and non-est because as on the date of the execution of the said sale deed the Bagavva Siddappa

Dabaj was not alive and she died on 18.09.1963. Hence, the sale deed itself is illegal and non-est in the eye of law. Hence, the question of seeking the relief of cancellation of the sale deed dated 12.07.1972 does not arise. I have perused the above said authority relied by the learned counsel for the plaintiff wherein it is held that when a document has been duly registered there is presumption of correctness and it can be rebutted only by strong evidence to the contrary. Any person against whom a written instrument is void or voidable and who has reasonable apprehension that such instrument if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable. When a document is void ab initio, decree for setting aside the same would not be necessary as same is non-est in the eye of law as it would be a nullity. In this present case on hand whether sale deed is illegal non-est is decided only after full-fledged trial of the suit at this pre trial stage it cannot be said that the sale deed dated 12.07.1972 is illegal and non-est. Hence, with due respect to the above said authority I am of the consider view that the said

authority presently not applicable to the present case on hand at their pretrial stage.

36. **Point No.5:-** For the aforesaid findings, I proceed to pass the following;

ORDER

The application filed by the plaintiff U/o
XXXIX Rule 1 and 2 R/W Section 151 of
CPC filed at I.A.No.I is hereby rejected.

The application filed by the defendant
U/o XXXIX Rule 4 R/W Section 151 of CPC
filed at I.A.No.X is hereby allowed.

The temporary injunction order granted
by this court on 07.07.2023 and 28.08.2023
is vacated.

Call on for hearing on I.A.No.VIII by
04.03.2026.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 04th day of February, 2026.)

(Umesh S. Atnure)
Prl. Senior Civil Judge Gokak.